

Plaintiff's claims with prejudice pursuant to Rule 12(c) [Dkt. Nos. 22 and 23], there can be no doubt that the Defendant is the prevailing party in this lawsuit.

An award of attorneys' fees and costs to the Defendant, therefore, is fully supported by all of the factors identified by the Supreme Court for district courts to consider in deciding whether to award attorneys' fees to prevailing parties in copyright infringement cases. *Kirtsaeng v. John Wiley & Sons, Inc.*, 136 S. Ct. 1979, 1985 (2016); *Fogerty v. Fantasy, Inc.*, 510 U.S. 517, 534 n.19 (1994). Moreover, this is without question the sort of case that the Supreme Court envisioned when it held in *Fogerty* that awarding attorneys' fees to prevailing defendants may be necessary to promote the policies of the Copyright Act and prevent meritless lawsuits. Under these circumstances, the Defendant submits that the Court should award attorneys' fees and costs to Defendant in full.

WHEREFORE, the Defendant moves that the Court award Defendant its reasonable attorneys' fees and costs incurred in defending this litigation.¹

Dated: New York, New York
June 16, 2020

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¹ At this time, pursuant to Fed. R. Civ. P. 54, Defendant seeks only a ruling on Plaintiff's liability for Defendant's fees. Defendant will submit submissions on the value of these services at a date and time to be set by the Court. *See* Fed. R. Civ. P. Rule 54 (d)(2)(c) ("The court may decide issues of liability for fees before receiving submissions on the value of services."); *see also Hudson v. Universal Studios, Inc.*, 2009 WL 536564, at *1–4 n.1 (S.D.N.Y. 2009) (granting award of attorneys' fees and setting schedule to determine the appropriate amount of fees.).